SUPPLEMENTAL
JOINT APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 75-567, 75-577

STATE OF OREGON, Acting by and through the State Land Board,

Petitioner,

v.

CORVALLIS SAND AND GRAVEL COMPANY, an Oregon corporation,

Respondent.

CORVALLIS SAND AND GRAVEL COMPANY, an Oregon corporation,

Petitioner,

v.

STATE OF OREGON, Acting by and through the State Land Board,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Oregon

Petitions for Certiorari filed
October 14, 1975 (No. 75-567) and
October 15, 1975 (No. 75-577)
Certiorari Granted January 12, 1976

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF BENTON

STATE OF OREGON, by and through the State Land Board, Plaintiff,	)	
v.	)	No. 21512
CORVALLIS SAND AND GRAVEL COMPANY, an Oregon corporation, Defendant.	)	

PARTIAL TRANSCRIPT — TESTIMONY OF FRED McHENRY

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FRED McHENRY, being called as a witness, was first duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Mix:

Q For the record, will you state your name, please?

A Fred McHenry.

Q And Judge McHenry, may we ask what year you were born, please?

A 1889.

Q And how long have you lived in Corvallis?

A Since May—no, since April 1898.

Q I see. That's been continuous, has it?

A Yes.

Q I believe you attended Oregon State University, did you not?

A I did.

Q And during what years was that, please?

A From fall of 1905 until the spring of 1909.

Q I see. And then what did you do after that in Corvallis, please?

A Well, until 1912 I was engaged with my father in a building

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—contracting building; 1912 I began as a deputy clerk in the county clerk's office here in this courthouse.

Q And how long did you continue as county clerk?

A Well, I was the deputy clerk until 1920 except for two years during the World War 1, and then I was appointed county clerk and I think it was January of 1920 and I served until January 1923, at that time I accepted the office—no, I was elected and took the office of district attorney which I held until April of 1949 and from 1949 until 1964 I was circuit judge here in this district and since then I have been retired.

Q Still practice a little law though?

A Well, yes.

Q All right. Judge McHenry, I direct you specifically to the area of Corvallis that we will call the Fischer Cut area and Fischer Island and so on, I am sure you are familiar with that?

A Yes, I am.

Q That section of the county?

A In a general way.

Q Yes. Did you have any occasion to visit this area, we'll say, oh, during the periods you were attending Oregon State University?

A Yes, I am sure I did.

Q Do you recall a particular occasion when you went there

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to view the river?

A Well, I don't recall the occasion that prompted me to go there, but I recall very definitely of being there on some occasions and seeing the river as it was then.

Q All right. Would you tell us, please, where you went and in terms of present day monuments, so to speak, where you stood and what you saw, please?

A Well, I don't know how many people here that know where the old Fischer Flour Mills stood or not—

Q That would be on the millrace where Evans Products is presently located?

A Right at the end of the millrace where it flows into the Willamette and the road went by this flouring mills toward the river and turned to the right and followed along the bank of the river up to

and into the Masonic Cemetery, Crystal Lake Cemetery.

Q Is this what we refer to as the Crystal Lake Road?

A Yes.

Q So to speak—all right.

A And there was a walk, a board walk, the fact is, there was board walks from the bridge crossing Marys River clear around to Fischer Mill and from Fischer's mill on around to, well, I wouldn't say it went clear to the cemetery, but practically to the cemetery.

Q Do you recall the occasion when you—particular occasion

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when you went out to view the river?

A Yes, I remember doing it.

Q All right. Do you recall what prompted you to go out, I mean, why did you go out to look at the river?

A Well, there was quite a little comment or talk about the river having broken through and at that time there wasn't much excitement around except something of that kind and just out of curiosity I went out there. I don't recall exactly when, but I did go out there and I observed it. In fact, I was acquainted with the old river where it comes around

what we now call East River and I observed when I was there that the main body of the river apparently was coming right across and into this East River.

Q Would this be through what we call the Fischer Cut area?

A I don't know what—I'm not familiar with Fischer Cut.

Q All right. Then but do I understand that this new channel ended at the point where East River comes into the present channel?

A That's right, that's right.

Q Did you actually see East River at that time?

A Oh, yes.

Q I see. And I take it you were standing at a point up on the bank where you could see this general area?

A Yes, I couldn't tell you exactly where I was standing, but I did see it from the bank, the breakthrough stream and

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the old river where they joined.

Q Now, was this a matter of common discussion of the community, this breakthrough?

A Well, I thought it was. It seemed to me it was. I'm surprised there aren't more people around here know about it now.

Q I see. Well, sir, can you give us an approximate date when you visited the scene of the time of the year and the year, if possible?

A Well, I couldn't give you the exact date, of course, or the exact year. I feel quite positive it was either 1909 or 1910 and it was during or shortly after the breakthrough which was during the high water of the winter season. Now, I wouldn't know whether it was December or January or March or when.

MR. MIX: All right. We have nothing further.

CROSS-EXAMINATION

By Mr. Herman:

Q Judge McHenry, were you familiar with the area over which the river ultimately passed through in 1909 or 1910 as you testified prior to this change that you testified to?

A You mean the area over which the breakthrough came?

Q Yes.

A No, I wasn't. I didn't—I knew it was there, but I

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wasn't familiar with it, never been on the ground or didn't know the elevation or anything about it.

MR. HERMAN: No further questions.

MR. MIX: May I ask one more question, Your Honor?

THE COURT: You may.

REDIRECT EXAMINATION

By Mr. Mix:

Q Judge McHenry, I neglected to ask you, do you know where the breakthrough occurred upstream?

A No, I do not.

MR. MIX: We have no further questions.

THE COURT: All right. You are excused, Judge. All right. You can remain and see how things are now.

WITNESS: Maybe I'd better do that.